In the High Court of Punjab and Haryana at Chandigarh

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CWP No.18959 of 2005

Date of decision: 6.11.2006

Karori Mal ..Petitioner

Versus

State of Punjab and others ..Respondents

Coram: Hon'ble Mr. Justice J. S.Khehar
Hon'ble Mr. Justice S. D.Anand

Present: Mr. Vikas Chatrath,Advocate
for the petitioner.
Mr. Ashok Aggarwal, Addl.A.G.Punjab
for the respondents.

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J.S.Khehar,J.(Oral

The petitioner claims to have been inducted as a Clerk in the office of District Attorney,Ludhiana on 8.8.1974. He was thereafter selected through the Subordinate Services Selection Board,Punjab as a Clerk in the office of Punjab Roadways, Pathankot on 9.11.1976. On 24.12.1977, he was promoted as Steno-typist and thereafter further promoted as Stenographer with effect from 8.2.1991.

Despite his promotion as Steno-typist and thereafter as Stenographer, the petitioner claimed promotion to the post of Junior Auditor with effect from the date persons junior to the petitioner were promoted as such, this request of the petitioner was acceded to through an order dated 16.5.1996 (Annexure P-4), whereby, the petitioner was promoted to the post of Junior Auditor with effect from 15.12.1989, i.e., with effect from the date when juniors to the petitioner in the cadre of Clerks were promoted as such.

The grievance of the petitioner in the instant writ petition emerges from a show cause notice dated 13.10.2005(Annexure P-6) vide which the petitioner was informed that his promotion to the post of Junior Auditor was in violation of the statutory rules, and it was proposed to revert him to the cadre of

Junior Scale Stenographers, with effect from the date he was promoted as Junior Auditor. In response to the aforesaid show cause notice, the petitioner submitted a detailed reply dated 31.10.2005. Having considered the aforesaid reply, an order dated 25.11.2005 was passed reverting the petitioner to the post of Junior Scale Stenographer. The order dated 25.11.2005 (Annexure P-8) is the subject matter of challenge at the hands of the petitioner through the instant writ petition.

The petitioner was promoted as Junior Auditor in the provisions of the Punjab Roadways(Ministerial State Service Class-III) Rules,1977(hereinafter referred to as 1977 rules). Rule 9(K) of the 1977 rules, which is relevant to the controversy is being extracted hereunder:-

> "Rule 9(K): in the case of Junior Auditors:
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> (i) 20 per cent by direct appointment; and
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> (ii) 80 per cent by promotion from amongst Assistant Accountants, Cashier, Assistant Cashiers or Clerks; or
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> (iii)by transfer or deputation of an official already in service a Government of a State or Government of India, if a suitable candidate is not available by the methods referred to in sub clauses (i) and (ii); "

It is apparent from a perusal of Rule 9(K) that 80 % of the posts in the cadre of Junior Auditors are to be filled up from amongst Assistant Accountants, Cashier, Assistant Cashiers or Clerks. The question to be determined is whether the petitioner was eligible for promotion to the post of Junior Auditor? Whereas, the petitioner claims that as he was inducted into service of the respondents as Clerk, and as such belongs to one of the feeding cadres for promotion to the post of Junior Auditor; the respondents assert that he ceased to be a member of the cadre of Clerks, when he was promoted as Steno-typist on 24.12.1977 and thereafter, as Junior Scale Stenographer on 8.2.1991, and as such did not belong to one of the feeding cadre for promotion to the post of Junior Auditor on 15.12.1989.

Having considered the matter in its entirety, we are satisfied that on

the date, the petitioner was promoted to the post of Junior Auditor i.e., on 15.12.1989, he was not a member of any other feeding cadres,i.e.,Assistant Accountants, Cashier, Assistant Cashiers or Clerks, wherefrom promotion is envisaged to the post of Junior Auditor. In view of the above, it is apparent that the promotion of the petitioner to the post of Junior Auditor with effect from 15.12.1989, was in clear violation of Ministerial Rules of Rule 9(K) of 1977.

For the reasons recorded above, we find no merit in the writ petition and the same is, accordingly, dismissed.

(J.S.KHEHAR)
JUDGE

November 6,2006
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(S.D.ANAND)
JUDGE